

DRAFT: May 3, 1995

## ESCROW AGREEMENT

This Escrow Agreement (this "Agreement") is entered into as of May \_\_, 1995, by and among America Online, Inc., a Delaware corporation ("AOL"), Wide Area Information Servers, Inc., a California corporation ("WAIS"), Brewster Kahle, as representative of the Holders (as hereinafter defined) of WAIS stock (the "Representative"), and NationsBank, N.A. as "Escrow Agent".

### RECITALS

A. WAIS, AOL and AOL Acquisition Corp., a California corporation and wholly-owned subsidiary of AOL ("Sub"), have entered into an Agreement and Plan of Reorganization, dated as of May \_\_, 1995 (the "Plan"), pursuant to which Sub will merge with and into WAIS, with WAIS surviving the Merger. The capitalized terms used in this Agreement and not otherwise defined herein will have the meanings given them in the Plan.

B. Pursuant to the Plan, an aggregate of \_\_\_\_\_ shares of AOL Common Stock are to be issued to the WAIS shareholders as listed on Exhibit A attached hereto.

C. The Plan provides for shares equaling ten percent (10%) of the shares of AOL Common Stock that are issued in the Merger to the WAIS Shareholders (the "Escrow Shares") to be deducted from the shares of AOL Common Stock issued to such WAIS shareholders (collectively the "Holders") and be placed in an escrow account (the "Escrow Account") to secure certain indemnification obligations of the Holders to AOL, Sub and other Indemnified Persons under the Plan on the terms and conditions set forth herein. The Escrow Shares required to be deposited in the Escrow Account pursuant to this Agreement by Holders are shown on Exhibit A attached hereto.

D. The parties hereto desire to establish the terms and conditions pursuant to which the Escrow Shares will be deposited, held in, and disbursed from the Escrow Account.

NOW, THEREFORE, the parties hereto hereby agree as follows:

### **1. Escrow and Indemnification**

(a) Escrow of Shares. Promptly after the Effective Time, Chemical Bank of Boston (or its successor or replacement), as Exchange Agent (the "Exchange Agent"), will deposit the Escrow Shares deducted from the shares issued to the Holders in the Merger with the Escrow Agent, who will hold them in escrow as collateral for the indemnification obligations of the Holders under Section 10.2 of the Plan until AOL is required to release such Escrow Shares pursuant to the terms of this Agreement. The Escrow Shares will include "Additional Escrow Shares" as that term is defined in Section 2(b) of this Agreement. The Escrow Agent agrees to accept delivery of the Escrow Shares and to hold such Escrow Shares in escrow subject to the terms and conditions of this Agreement.

(c) Distribution to Holders. AOL will deliver written notice (the "Release Notice") to the Representative and the Escrow Agent of AOL's issuance of its audited financial results (the "Triggering Financials") for its year ending June 30, 1995 (the "Final Release Date") concurrently with the issuance of the Triggering Financials. Within five (5) business days after the later of (i) the first anniversary of the Closing Date and (ii) the date of the Escrow Agent's receipt of the Release Notice, the Escrow Agent will release from escrow to the Holders their respective Escrow Shares, plus all Additional Escrow Shares, less (A) any Escrow Shares delivered to the Exchange Agent for AOL's account in accordance with Section 4 hereof in satisfaction of Claims by AOL and (B) any Escrow Shares subject to delivery to the Exchange Agent for AOL's account in accordance with Section 4 hereof with respect to any then pending but unresolved Claims of AOL. Any Escrow Shares held as a result of clause (B) will be released to the Holders or released to the Exchange Agent for AOL's account for cancellation (as appropriate) promptly upon resolution of each specific Claim involved.

(d) Release of Shares. Delivery of Escrow Shares to be released will be in the form of stock certificate(s) issued in the name of the appropriate Holder. AOL and Representative undertake to deliver a timely notice to Escrow Agent identifying the number of Escrow Shares to be released within the five (5) business day period set forth in Section 2(c) above. Escrow Shares will be released to the respective Holders in proportion to their respective interests as set forth in Exhibit A, as revised immediately prior to the Final Release Date. AOL will take such action as may be necessary to cause the Exchange Agent to issue stock certificates in the names of the appropriate Holders. Certificates representing Escrow Shares will bear a legend indicating that they are subject to resale restrictions under Rule 144, if applicable. Cash Concurrently with release of the Escrow Shares, cash will be paid in lieu of fractions of Escrow Shares in an amount equal to the product determined by multiplying such fraction by the closing sale price of AOL Common Stock as quoted on the Nasdaq National NASDAQ Stock Market and as reported in The Wall Street Journal as of the Closing Date (as defined in the Plan) (such closing price being hereafter referred to as the "Closing Price"). Within If not previously paid, within five (5) business days after written request from any Holder, AOL will pay directly to such Holder such amount for fractional shares.

(e) No Encumbrance. No Escrow Shares or any beneficial interest therein may be pledged, sold, assigned or transferred, including by operation of law, by a Holder or be taken or reached by any legal or equitable process in satisfaction of any debt or other liability of a Holder (other than such Holder's obligations under Section 10.2 of the Plan or under this Agreement), prior to the delivery to such Holder of the Escrow Shares by the Escrow Agent.

(f) Power to Transfer Escrow Shares. The Escrow Agent is hereby granted the power to direct the Exchange Agent to effect any transfer of Escrow Shares contemplated by Sections 2(c), 3(b) and 4 of this Agreement. AOL and the Escrow Agent will cooperate in promptly delivering stock certificates to the Exchange Agent to effect such transfers.

(b) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Facsimile copies of such counterparts are acceptable.

(c) Entire Agreement. Except as otherwise set forth in the Plan and the Agreement of Merger, this Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior agreements or understandings, written or oral, between the parties with respect to the subject matter hereof.

(d) Waivers. No waiver by any party hereto of any condition or of any breach of any provision of this Agreement will be effective unless in writing. No waiver by any party of any such condition or breach, in any one instance, will be deemed to be a further or continuing waiver of any such condition or breach or a waiver of any other condition or breach of any other provision contained herein.

## **9. Expenses**

(a) Escrow Agent. All fees and expenses of the Escrow Agent incurred in the ordinary course of performing its responsibilities hereunder will be paid in advance by AOL upon receipt of a written invoice by Escrow Agent. Any extraordinary fees and expenses, including without limitation any fees or expenses incurred by the Escrow Agent in connection with a dispute over the distribution of Escrow Shares or the validity of a Notice of Claim, will be paid by AOL (and AOL shall thereupon be entitled to reimbursement from the Holders of 50% of such fees and expenses). The Holders' liability to reimburse AOL for the fees and expenses of the Escrow Agent (which will be pro rata for each Holder based on the proportion of the total Escrow Shares attributable to such Holder) may be recovered by AOL as a Claim hereunder out of the Escrow Shares so long as aggregate Claims exceed the WAIS Basket designated in the Plan.

(b) Representative. The Representative will not be entitled to receive any compensation from AOL or the Holders in connection with this Agreement. Any out-of-pocket costs and expenses reasonably incurred by the Representative in connection with actions taken pursuant to the terms of this Agreement will be paid by the Holders to the Representative in proportion to their percentage interests in the Escrow Shares set forth on Exhibit A.

**10. Successor Escrow Agent**. In the event the Escrow Agent becomes unavailable or unwilling to continue in its capacity herewith, the Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving notice of its resignation to the parties to this Agreement, specifying a date not less than ten (10) days' following such notice date of when such resignation will take effect. AOL will designate a successor Escrow Agent prior to the expiration of such ten-day period by giving written notice to the Escrow Agent and the Representative. AOL may appoint a successor Escrow Agent without the consent of the Holders or the Representative so long as such successor is a bank with assets of at least \$50 million, and may appoint any other successor Escrow Agent with the consent of the Representative, which will not be unreasonably withheld; provided, however, that any such successor Escrow Agent

**becomes a party to this Agreement.** The Escrow Agent will promptly deliver the Escrow Shares to such designated successor.

**11. Limitation of Responsibility.** The Escrow Agent's duties are limited to those set forth in this Agreement, and Escrow Agent, acting as such under this Agreement, is not charged with knowledge of or any duties or responsibilities under any other document or agreement, including without limitation the Plan. Escrow Agent may execute any of its powers or responsibilities hereunder and exercise any rights hereunder either directly or by or through its agents or attorneys. Nothing in this Escrow Agreement shall be deemed to impose upon the Escrow Agent any duty to qualify to do business or to act as a fiduciary or otherwise in any jurisdiction other than the jurisdiction(s) required under the law governing its organization. Escrow Agent shall not be responsible for and shall not be under a duty to examine into or pass upon the validity, binding effect, execution or sufficiency of this Escrow Agreement or of any agreement amendatory or supplemental hereto.

**12. Amendment.** This Agreement may be amended by the written agreement of AOL, the Escrow Agent and the Representative; provided that, if the Escrow Agent does not agree to an amendment agreed upon by AOL and the Representative, the Escrow Agent will resign and AOL will appoint a successor Escrow Agent in accordance with Section 10 above. No such amendment may treat any one Holder differently from the other Holders unless consented to in writing by Holders having beneficial ownership in a majority of the outstanding Escrow Shares, including the consent of any Holder who is to be treated differently.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**